

ESTTA Tracking number: **ESTTA304463**Filing date: **09/03/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	GA Modefine S.A.		
Entity	Corporation	Citizenship	Switzerland
Address	Via Penate 4 Mendrisio, CH-6850 SWITZERLAND		

Attorney information	Mark I. Peroff Hiscock & Barclay LLP Seven Times Square New York, NY 10036 UNITED STATES mperoff@hblaw.com, trademarks@hblaw.com, apatel@hblaw.com Phone:212-784-5800
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Applicant Information

Application No	77703650	Publication date	08/04/2009
Opposition Filing Date	09/03/2009	Opposition Period Ends	09/03/2009
Applicant	Fructuoso, Waldyr D. 12777 Avalon Cove Drive N. Jacksonville, FL 32224 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Caps; Wearable garments and clothing, namely, shirts

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2703350	Application Date	05/01/1997
Registration Date	04/08/2003	Foreign Priority Date	11/15/1996
Word Mark	A/X		
Design Mark			
Description of Mark	NONE		

Goods/Services	<p>Class 009. First use: eyeglasses, sunglasses, glasses cases, sport glasses, glasses chains, glasses frames, glasses lenses, pincenez</p> <p>Class 014. First use: earrings, bracelets, necklaces, rings, pendants, brooches, chains, pins, diadems, medallions, cufflinks, tie clips; jewelry, imitation jewelry; watches, clocks, chronometers, watch straps; jewelry and watch cases made of precious metals, trays and ashtrays of precious metals, cigarette boxes of precious metals, napkin rings of precious metals</p> <p>Class 018. First use: handbags, luggage, shoulder bags, beach bags, clutch bags, all purpose sports bags, attache cases, school bags, tote bags, travelling bags, credit card cases, document cases, passport cases, cosmetic cases sold empty, keycases, knapsacks, rucksacks, briefcases, purses, wallets, travelling trunks, suitcases, umbrellas, parasols, walking sticks</p> <p>Class 025. First use: underwear, brassieres, corsets, hosiery, petticoats, nightgowns, pyjamas, pullovers, dressing gowns, bath robes, gloves, cardigans, hats, jerseys, ties, foulards, scarves, sweaters, socks, stockings, trousers, leggings, skirts, jackets, jerkins, shirts, vests, jumpers, track suits, blouses, jeans, pants, bermuda shorts, T-shirts, caps, panties, sweat-shirts, suits and dresses, overcoats, coats, anoraks, raincoats, bathing suits, belts, shoes, boots, slippers</p>
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Attachments	SNY10109090315100.pdf (12 pages)(275739 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/mark i. peroff/
Name	Mark I. Peroff
Date	09/03/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/703,650
Published in the Official Gazette of August 4, 2009

Atty. Ref.: 3042191

GA MODEFINE S.A.,

Opposer,

-against-

WALDYR D. FRUCTUOSO,

Applicant.

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on September 3, 2009.

By: 

Mark I. Peroff, Attorney for Opposer

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer GA Modefine S.A. (hereinafter referred to as “Armani” or “Opposer”), a corporation organized and existing under the laws of Switzerland, located and doing business at Via Penate 4, Mendrisio, Switzerland Ch-6850, believes that it will be damaged by registration of the trademark “JAX JEANS and design”, as shown in Application Serial Number 77/703,650 filed March 31, 2009, by Waldyr D. Frustuoso (hereinafter referred to as “Applicant”) for “caps; wearable garments and clothing, namely shirts” and hereby opposes same.

As grounds for opposition, Opposer, by its attorneys Hiscock & Barclay LLP, alleges as follows:

1. Armani has been continuously engaged since 1991 in the business of manufacturing, marketing, and selling a wide variety of clothing for men and women under the trademark “A/X” and A/X ARMANI EXCHANGE throughout the United States and other countries.

2. Since long prior to the alleged intention of Applicant to adopt its mark, Opposer has extensively advertised and promoted its goods making clear and prominent use of the trademark A/X to identify and distinguish Opposer’s goods from those of others. As a result of such advertising and promotion, Opposer has enjoyed widespread sales of its goods offered and sold under Opposer’s trademark A/X.

3. Opposer has expended substantial amounts of money, time, and effort in advertising, promoting, and popularizing its “A/X” trademark so that the trade in general, and the purchasing public in particular, have come to know and recognize Opposer’s “A/X” trademark and goods as a famous mark, and to know that the same originate with and belong to Oppose

4. Opposer is the owner of U.S. trademark registration no. 2,703,350 for the trademark A/X, registered on April 8, 2003, in respect of a wide variety of clothing including “caps” and “shirts”. This registration is valid and subsisting on the records of the U.S. Patent & Trademark Office. A copy of a TARR trademark status printout for Opposer’s registration is attached to the Notice of Opposition as Exhibit “A”. Additionally, Opposer hereby give notice that, in accordance with Trademark Rule 2.122(d), it will rely on said registration as evidence on

its behalf in this proceeding, and a status copy thereof will be introduced during Opposer's testimony period.

5. There is no issue of priority since the filing date of Applicant's trademark application is subsequent to the filing date of Opposer's aforesaid registration for A/X. and to the date of first use of Opposer's trademark.

6. Opposer's pleaded trademark is inherently distinctive and represents an extremely valuable asset and symbol of the goodwill of its business by identifying goods which have their source of origin exclusively with Opposer, and by distinguishing such goods from those of others.

7. Applicant's alleged trademark "JAX JEANS and design" is so similar to Opposer's pleaded trademark in sound, appearance, and commercial impression, as to be likely to cause confusion as to the source of goods bearing the respective marks.

8. The respective goods of Opposer and Applicant are identical and/or related, and are likely to travel through the same channels of trade for sale to or use by the same general class of purchasers and/or users.

9. Applicant's alleged trademark is likely to cause irreparable loss, injury and damage to Opposer's business, to the expansion thereof, and to any goodwill attributable thereto, as symbolized and recognized by its aforementioned trademark.

10. Applicant's alleged trademark is a colorable imitation and misappropriation of Opposer's pleaded trademark, and will enable Applicant to trade on the goodwill of Opposer's business, as symbolized and recognized by its aforementioned trademark.

11. Applicant's alleged trademark consists of or comprises a mark which so resembles the mark previously used in the United States by another and not abandoned, as to be

likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

IN CONCLUSION, Opposer, by its undersigned attorneys, prays that its opposition to Application Serial No. 77/703,650 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Opposer that the Board finds to be necessary and just in the circumstances.

The opposition filing fee of \$300 is being paid by credit card, and the Commissioner is hereby authorized to charge Deposit Account No. 50-3010 in the event that it is not possible to process the credit card payment, or in the event that any other fees are required to be paid in connection with this proceeding.

Respectfully submitted,
GA MODEFINE S.A.

Dated: September 3, 2009

By: 

Mark I. Peroff

HISCOCK & BARCLAY, LLP

Seven Times Square

New York, NY 10036

Tel. No.: (212) 784-5800

Fax No.: (212) 784-5757

E-Mail: mperoff@hblaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of September, 2009, I served a true and correct copy of the foregoing NOTICE OF OPPOSITION, via First Class U.S. Mail, postage prepaid, upon the Applicant at the correspondence address of record:

Fructuoso, Waldyr D.
12777 Avalon Cove Dr
Jacksonville, Fl 32224

By:  _____
Alpa Patel

EXHIBIT A

Int. Cls.: 9, 14, 18 and 25

Prior U.S. Cls.: 1, 2, 3, 21, 22, 23, 26, 27, 28, 36, 38, 39,
41 and 50

United States Patent and Trademark Office

Reg. No. 2,703,350

Registered Apr. 8, 2003

**TRADEMARK
PRINCIPAL REGISTER**

A/X

GA MODEFINE S.A. (SWITZERLAND COMPANY)
AVENUE DE FRANCE, 90
LAUSANNE, SWITZERLAND

FOR: EYEGLASSES, SUNGLASSES, GLASSES
CASES, SPORT GLASSES, GLASSES CHAINS, GLAS-
SES FRAMES, GLASSES LENSES, PINCENEZ, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FOR: EARRINGS, BRACELETS, NECKLACES,
RINGS, PENDANTS, BROOCHES, CHAINS, PINS,
DIADEMS, MEDALLIONS, CUFFLINKS, TIE CLIPS;
JEWELRY, IMITATION JEWELRY; WATCHES,
CLOCKS, CHRONOMETERS, WATCH STRAPS;
JEWELRY AND WATCH CASES MADE OF PRE-
CIOUS METALS, TRAYS AND ASHTRAYS OF
PRECIOUS METALS, CIGARETTE BOXES OF PRE-
CIOUS METALS, NAPKIN RINGS OF PRECIOUS
METALS, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FOR: HANDBAGS, LUGGAGE, SHOULDER
BAGS, BEACH BAGS, CLUTCH BAGS, ALL PUR-
POSE SPORTS BAGS, ATTACHE CASES, SCHOOL
BAGS, TOTE BAGS, TRAVELLING BAGS, CREDIT
CARD CASES, DOCUMENT CASES, PASSPORT
CASES, COSMETIC CASES SOLD EMPTY, KEYCA-
SES, KNAPSACKS, RUCKSACKS, BRIEFCASES,
PURSES, WALLETS, TRAVELLING TRUNKS, SUIT-

CASES, UMBRELLAS, PARASOLS, WALKING
STICKS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FOR: UNDERWEAR, BRASSIERES, CORSETS,
HOSIERY, PETTICOATS, NIGHTGOWNS, PYJA-
MAS, PULLOVERS, DRESSING GOWNS, BATH
ROBES, GLOVES, CARDIGANS, HATS, JERSEYS,
TIES, FOULARDS, SCARVES, SWEATERS, SOCKS,
STOCKINGS, TROUSERS, LEGGINGS, SKIRTS,
JACKETS, JERKINS, SHIRTS, VESTS, JUMPERS,
TRACK SUITS, BLOUSES, JEANS, PANTS, BERMU-
DA SHORTS, T-SHIRTS, CAPS, PANTIES, SWEAT-
SHIRTS, SUITS AND DRESSES, OVERCOATS,
COATS, ANORAKS, RAINCOATS, BATHING SUITS,
BELTS, SHOES, BOOTS, SLIPPERS, IN CLASS 25
(U.S. CLS. 22 AND 39).

PRIORITY CLAIMED UNDER SEC. 44(D) ON
SWITZERLAND APPLICATION NO. 08487/1996,
FILED 11-15-1996, REG. NO. 438920, DATED 4-2-
1997, EXPIRES 11-15-2006.

OWNER OF U.S. REG. NOS. 1,756,717 AND
1,797,334.

SER. NO. 75-285,048, FILED 5-1-1997.

RICHARD A. STRASER, EXAMINING ATTORNEY

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This page was generated by the TARR system on 2009-09-03 14:43:34 ET

Serial Number: 75285048 Assignment Information Trademark Document Retrieval

Registration Number: 2703350

Mark (words only): A/X

Standard Character claim: No

Current Status: Registered.

Date of Status: 2003-04-08

Filing Date: 1997-05-01

Transformed into a National Application: No

Registration Date: 2003-04-08

Register: Principal

Law Office Assigned: LAW OFFICE 114

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2008-05-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. GA MODEFINE S.A.

Address:

GA MODEFINE S.A.
Avenue de France, 90
LAUSANNE
Switzerland

Legal Entity Type: Company

State or Country Where Organized: Switzerland

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

eyeglasses, sunglasses, glasses cases, sport glasses, glasses chains, glasses frames, glasses lenses, pincenez

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 014

Class Status: Active

earrings, bracelets, necklaces, rings, pendants, brooches, chains, pins, diadems, medallions, cufflinks, tie clips; jewelry, imitation jewelry; watches, clocks, chronometers, watch straps; jewelry and watch cases made of precious metals, trays and ashtrays of precious metals, cigarette boxes of precious metals, napkin rings of precious metals

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 018

Class Status: Active

handbags, luggage, shoulder bags, beach bags, clutch bags, all purpose sports bags, attache cases, school bags, tote bags, travelling bags, credit card cases, document cases, passport cases, cosmetic cases sold empty, keycases, knapsacks, rucksacks, briefcases, purses, wallets, travelling trunks, suitcases, umbrellas, parasols, walking sticks

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 025

Class Status: Active

underwear, brassieres, corsets, hosiery, petticoats, nightgowns, pyjamas, pullovers, dressing gowns, bath robes, gloves, cardigans, hats, jerseys, ties, foulards, scarves, sweaters, socks, stockings, trousers, leggings, skirts, jackets, jerkins, shirts, vests, jumpers, track suits, blouses, jeans, pants, bermuda shorts, T-shirts, caps, panties, sweat-shirts, suits and dresses, overcoats, coats, anoraks, raincoats, bathing suits, belts, shoes, boots, slippers

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Prior Registration Number(s):

1756717

1797334

Foreign Application Number: 08487/1996

Foreign Registration Number: 438920

Foreign Registration Date: 1997-04-02

Country: Switzerland

Foreign Filing Date: 1996-11-15

Foreign Expiration Date: 2006-11-15

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-05-01 - Case File In TICRS

2003-04-08 - Registered - Principal Register

2003-01-21 - Opposition terminated for Proceeding

2003-01-21 - Opposition dismissed for Proceeding

1999-01-21 - Opposition instituted for Proceeding

1998-11-09 - Extension Of Time To Oppose Received

1998-10-13 - Published for opposition

1998-09-11 - Notice of publication

1998-08-02 - Approved for Pub - Principal Register (Initial exam)

1998-07-09 - Communication received from applicant

1998-01-20 - Non-final action mailed

1998-01-20 - Assigned To Examiner

1998-01-14 - Assigned To Examiner

1998-01-08 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

HERBERT DUBNO

Correspondent

DENISE A. LINDENAUER

AMSTER ROTHSTEIN & EBENSTEIN

90 PARK AVENUE

NEW YORK, NY 10016

Domestic Representative

THE FIRM OF KARL F. ROSS, P.C.



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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 1

Serial #: 75285048

Filing Dt: 05/01/1997

Reg #: 2703350

Reg. Dt: 04/08/2003

Registrant: GA MODEFINE S.A.

Mark: A/X

Assignment: 1

Reel/Frame: 3203/0866

Received: 09/29/2005

Recorded: 04/28/2005

Pages: 4

Conveyance: CHANGE OF ADDRESS

Assignor: GA MODEFINE S.A.

Exec Dt: 03/14/2005

Entity Type: CORPORATION

Citizenship: NONE

Assignee: GA MODEFINE S.A.

VIA PENATE 4

CH-6850 MENDRISIO, SWITZERLAND

Entity Type: CORPORATION

Citizenship: NONE

Correspondent: THE FIRM OF KARL F. ROSS P.C.

CUSTOMER NUMBER 535

5676 RIVERDALE AVENUE BOX 900

RIVERDALE (BRONX), NY 10471-0900

Search Results as of: 09/03/2009 02:43 PM

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